



THE INTERIM

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LEGISLATIVE SESSION PER DIEM PAYMENTS TO LEGISLATORS: TAX CONSIDERATIONS

The following information is intended to assist legislators and their tax preparers in handling legislative session per diem payments. Legislators should consult with their income tax preparers for specific requirements relating to individual circumstances.

General rules...All legislator per diem payments not exceeding the amount allowed by federal law that are made to legislators living more than 50 miles from the capitol building are reimbursements made under an accountable plan, are not taxable income of the legislator, and are not subject to withholding or reporting. The difference between the amount allowed by federal law for reimbursement and the actual amount of per diem paid is taxable income.

Legislator per diem payments made to legislators who do not live in Helena but who live within 50 miles of the capitol building are not substantiated reimbursements and are thus reported as income. Withholding is made against these payments. All legislative lodging and meal expenses actually incurred by a non-Helena legislator living within 50 miles of the capitol building are unreimbursed expenses and, subject to certain limitations, may be a miscellaneous items deduction by the legislator.

Legislator per diem payments made to legislators who reside in Helena are reported as income and are subject to withholding. The legislator may not claim meal and lodging expenses incurred in Helena.

Accountable plan...All legislator per diem payments made to a legislator whose home is more than 50 miles from the capitol building are employee reimbursements under an accountable plan for the following reasons:

(1) Under 26 U.S.C. 162(h), a legislator is considered to have substantiated living expenses if the legislator's place of residence is more than 50 miles from the capitol building.

(2) Federal law provides one type of accountable plan for when the employee's "lodging plus meals and incidental expenses" per diem reimbursement is substantiated (26 U.S.C. 62(a)(2)(A), 26 CFR 1.62-2(c)(2)).

Excess per diem payment...The amount considered substantiated under federal law cannot exceed the amount payable to federal employees for per diem within the U.S. For Montana, the applicable reimbursement rate, set forth in 41 CFR Ch. 301 App. A, is \$91 a day through Sept. 30 and \$99 a day beginning Oct. 1. The per diem payment made to legislators is \$94.05 per legislative day, set according to 5-2-301(4), MCA.

Reimbursements paid "under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA). . .)" (26 CFR 1.62-2(c)(4)).

Montana legislators were paid per diem for 108 regular and special session legislative days at \$94.05 per day, for a total of \$10,157.40. Section 26 U.S.C. 162(h)(2)(A)

THE INTERIM

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THE INTERIM is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.state.mt.us>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

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considers per diem substantiated during legislative session breaks of up to 4 days. Montana law provides for reimbursement only on breaks of 3 days. During the regular session there was a 5-day break on Feb. 24 through 28 and a 4-day break on March 25 through 28. State per diem was paid for 3 days during the February break, but because the break exceeded 5 days, federal law did not consider the payment as substantiated per diem. For the March break per diem was paid for 3 days, but 4 days were allowable under federal law. Federal law then allows substantiation of 104 regular session days at \$91 a day and 2 special session days at \$99 a day for a total of \$9,662. A total of \$495.40 (\$10,157.40 - \$9,662) was paid in excess of substantiated business expenses.

Therefore, although all legislators living more than 50 miles from the capitol building do not have their per diem payments reported on their W-2 Forms, they must pay taxes on the \$495.40 that is in excess of the amount considered substantiated under federal law.

Helena area legislators... Under 26 U.S.C 162(h)(4), the special provisions allowing use of the federal per diem rate do not apply to legislators living within 50 miles of the capitol building. Therefore, those legislators must follow the provisions of 26 U.S.C. 274(d) and must specifically substantiate all lodging and meal expenses. Because 26 U.S.C. 274(d) requires out-of-town travel before a person can claim lodging and meal expenses, a legislator who lives in Helena cannot claim any meal or travel expenses for session activities occurring within Helena.

If you have questions about the information above, contact Lee Heiman, Legislative Services Division, at (406) 444-3064 or lheiman@state.mt.us.

LEGISLATIVE COUNCIL

March meeting planned... The Legislative Council will meet Friday, March 24 at 9 a.m. in Room 137 of the state Capitol. Tentative agenda items include consultation on a proposed property transfer, discussion of action items identified during the September planning session, and selection of dates for the 2006 party caucuses, new legislator orientation, and continuing education program. The council may also meet with representatives from the Canadian Consulate General in Denver.

For more information about the meeting, call Lois Menzies at (406) 444-3066 or lomenzies@mt.gov.

LEGISLATORS: REPORTING ON-THE JOB INJURY

Report injury to Legislative Services Division... A legislator injured in an accident related to legislative business should immediately report the injury to the

Legislative Services Division, even if you do not receive medical treatment. The Legislative Services Division is required to notify the State Fund of the injury by submitting a first report of injury form. To report an injury, please call Kelly DaSilva or Lesley Bergman at (406) 444-3064.

MONTANA LEGISLATIVE REFERENCE CENTER

Working in the Capitol building in Helena, you often hear the phrase, "it's all politics" thrown around quite freely. But is it really? Here are some websites to help you make sense of all things political and get some basic facts and figures.

PoliticalMoneyLine (<http://www.fecinfo.com>)... This website contains a great deal of information on presidential and congressional campaign funding and advocacy groups. Refer to this if you're interested in following the money.

Project Vote Smart (<http://www.vote-smart.org/index.htm>)... Project Vote Smart reports on candidates and elected officials in five basic categories: biographical information, issue positions, voting records, campaign finances, and interest group ratings.

The Center for Responsive Politics (<http://www.opensecrets.org/527s/index.asp>)... This website provides a wealth of information on third-party advocacy groups and who funds them.

RealClearPolitics (<http://realclearpolitics.com>)... This blog has links to columns and editorials from leading newspapers and journals. You can browse by topic, commentary, talk show opinion, polls, and more.

D-NET (<http://www.dnet.org>)... This website is sponsored by the League of Women Voters Education Fund and covers political races on all geographic levels. You can browse through statements from candidates on key issues.

Institute on Money in State Politics (<http://www.followthemoney.org>)... This Helena-based national group tracks donations for state races--from governor to state legislative candidates to ballot measures. It also categorizes donations by economic and political interests.

Politics1 (<http://politics1.com>)... This mostly nonpartisan website covers most aspects of elections. It contains a variety of links to both sides of an issue.

Factcheck.org--Annenberg Political FactCheck (<http://www.factcheck.org>)... This website was created by the Annenberg Public Policy Center of the University of Pennsylvania. It is a nonpartisan consumer advocate site that introduces information into campaign rhetoric; it also contains special reports.

So, the next time you're in the Capitol and wonder if it's all politics, you can check the above websites and find out! Don't forget to contact the legislative library for all your general and legal research needs. Contact Lisa Mecklenberg Jackson at Ljackson@mt.gov or (406) 444-2957.

LEGISLATIVE FINANCE COMMITTEE

LRBP Funding...The Long-Range Building Program (LRBP) Cash Funding subcommittee of the interim Legislative Finance Committee will meet Feb. 6 from 1 p.m. to 5 p.m. in Room 102 of the Capitol. The subcommittee, including Sens. Mike Cooney and Rick Laible and Reps. Ray Hawk and Gary Branae, is looking at alternative ways for funding the LRBP cash program. Funding for the program has declined significantly over the past two decades. At this time, program funding does not adequately cover the costs of major maintenance for the state's building inventory and has resulted in a significant deferred maintenance backlog. The goal of the subcommittee is to develop a mechanism that will adequately fund the state's major maintenance requirements while reducing or eliminating the deferred maintenance backlog. For more information, contact Cathy Duncan at cduncan@mt.gov or (406) 444-4580.

Low-income energy assistance...The following provides an update on energy assistance available to low-income families through the Montana Low Income Energy Assistance Program (LIEAP). As of Jan. 12, 2006, there were 13,221 approved LIEAP cases, representing a 10 percent increase in approved cases over the same period in last year's heating season.

The Department of Public Health and Human Services expects to provide assistance to about 22,500 households this year. Based on this estimate, the one-time, annual benefit payment for the 2006 heating season (October through April) was projected to be \$299 per household. However, the governor added \$1.5 million in general fund money under Executive Order 25 and the state has received an additional \$3.15 million in federal funds, raising the benefit payment to \$459 per household. At current fuel prices, this amount will cover approximately 38 percent of the average LIEAP household's annual heating costs. Last year's average benefit of \$477 covered approximately 50 percent of the average household's annual heating costs.

Federal and state funds available for LIEAP include the following:

- \$14.3 million of federal funding for the current heating season. Of this amount, \$10.1 million will be used for heating assistance and client education benefits; \$1.9 million will be used for weatherization assistance; \$1.1 million will be used for state and local administration and planning; \$0.6 million will be used for emergency assistance benefits; and \$0.6 million will be used for advance purchase of propane for the next heating season.

- A \$500,000 general fund appropriation in House Bill 2 will provide \$190,361 for heating assistance this winter. The rest of the money will be used for tribal LIEAP programs (described below) and for the governor's Warm Hearts Warm Homes initiative.
- \$2.5 million of general fund money in the governor's Executive Order 25 provides heating assistance benefits. However, the order contains a stipulation that "... if federal funds above the \$14,351,000 Montana anticipates are realized, general funds will be returned to the state treasury at a one-to-one ratio." The funds approved by Congress exceeded this amount by about \$700,000 thereby reducing the \$2.5 million to about \$1.8 available for state LIEAP benefits and tribal heating assistance benefits described below.

There are six Indian reservations in Montana that manage LIEAP programs independently of the state administered program described above. The six reservations (Northern Cheyenne, Fort Belknap, Fort Peck, Rocky Boys, Flathead and Blackfeet reservations) report benefit amounts and households served directly to the U.S. Department of Health and Human Services. The HHS report for the 2004 heating season shows that 4,896 reservation households received heating assistance or emergency support or both. Federal tribal support is estimated at \$2.6 million for the 2006 heating season.

For the 2006 heating season, the six tribes will receive \$87,403 of the \$500,000 House Bill 2 appropriation and \$314,454 from the governor's executive order. Low-income energy assistance for the Crow Reservation is administered through the District VII Human Resource Development Council in Billings under the state LIEAP. For the 2005 heating season, 1,181 households were served.

The Weatherization Assistance Program complements LIEAP by reducing the energy costs of those households with the highest energy burdens (calculated by dividing annual energy costs by household income). Depending on funding, the Weatherization Assistance Program annually weatherizes 1,600 to 2,000 LIEAP households. Weatherization results in a 21 percent average reduction in energy usage in these homes.

For more information about this article, contact Marilyn Daumiller at mdaumiller@mt.gov or (406) 444-5386. To find out where to apply for energy or weatherization assistance, Montanans should contact the Montana Citizen's Advocate, toll free at 1-800-332-2272, or visit the LIEAP website at <http://www.dphhs.mt.gov/programsservices/energyassistance>.

LFC March meeting...The Legislative Finance Committee is scheduled to meet on March 9 and 10. The agenda will likely include reports or updates on these key topics:

- general fund update;
- low-income energy assistance;

- emergency powers of the governor in the event of a major oil and gas shortage;
- DPHHS program issues, including budget pressure points, Medicare Part D implementation, and the HIFA waiver status;
- Department of Corrections budget and long term solutions to budget problems; and
- District Court program cost over-runs.

Other reports or updates planned for this meeting include status reports on subcommittee activities and other studies. The agenda will be available on the Legislative Fiscal Division website in late February, and reports will be posted as they become available. The website address is <http://www.leg.mt.gov/css/fiscal/default.asp> or you can contact Clayton Schenck for more information at cschenck@mt.gov or (406) 444-2986.

ECONOMIC AFFAIRS COMMITTEE

Dealing with identity theft ... At its Feb. 10 meeting, the Economic Affairs Interim Committee will hear of the benefits and the potential downside of legislation that would allow people to institute a credit or security freeze, considered a way to prevent identity thieves from creating new credit accounts in someone else's name. To date, 12 states have implemented variations of a voluntary security freeze. The meeting will start at 8:30 a.m. in Room 102 of the Capitol.

Suggested legislation from the Consumers Union and from the Consumer Data Industry Association (CDIA), which represents credit reporting agencies, will be presented. Gail Hillebrand, a senior attorney with the Consumers Union, will provide insights into implementation of some of the first laws in the nation dealing with identity theft. She also will discuss security freeze legislation from a consumers' perspective. Eric Ellman of the CDIA will provide the view from the credit reporting agencies. Members of a working group on identity theft have reviewed the legislation and will comment on their preferences.

Another element of identity theft prevention will include options for dealing with the use of social security numbers by government and others. A panel of identity theft working group members will discuss the potential for eliminating the use of social security numbers on hunting and fishing licenses and on state health insurance cards.

Reports and updates... The subcommittee appointed to the Senate Joint Resolution 35 study of professional and occupational licensing boards will brief the full committee on its first meeting, which took place Jan. 19. The subcommittee heard informal reports on financial issues affecting boards and discussed with board members and board representatives, along with the Department of Labor and Industry, how costs are calculated.

Agency monitoring... State Auditor John Morrison has

been invited to update the committee on activities of the State Auditor's Office, which is among the agencies monitored by the committee. Similarly, Judge Jim Shea of the Workers' Compensation Court and Laurence Hubbard of the Montana State Fund will provide overviews of their respective activities.

For more information, see the committee website or contact committee staff Pat Murdo at (406) 444-3594 (pmurdo@mt.gov), Bart Campbell at (406) 444-3087 (bacampbell@mt.gov), or Dawn Field at (406) 444-3073 (dfield@mt.gov).

In memoriam... The committee notes with sadness the unexpected death of the wife of Sen. Don Steinbeisser, a member of the committee. Leona Steinbeisser died Jan. 14.

HOUSE BILL 22 WATER ADJUDICATION UPDATE

This article was written by Krista Lee Evans , Research Analyst, Legislative Services Division.

In January, legislators received many phone calls, emails, and faxes from water users regarding the fee assessments they received as a result of the passage of House Bill 22. The purpose of this article is to help legislators understand what the statewide water adjudication is all about, how it started, and how HB 22 affects the adjudication so that legislators are more informed when they receive questions from constituents. This article is not meant to debate funding sources for the adjudication or to debate the merits of different options.

Water rights and water adjudication... Most Montanans probably do not realize that the state is in the middle of a significant court case involving statewide water adjudication, with every water right holder being a critical part of this court case. People who took part in the initial claims filing phase are probably more in tune to this issue than others because it has been an important issue brought to them in the past. Many people do not understand why completion of Montana's water adjudication is important and what benefits, if any, it provides to Montana's water users-- which in reality is every citizen in the state.

People are asking: "Is it worth it for me, as a private citizen, to pay \$20 to keep my water right?" "How important is a water right?" "Should I just forfeit my water right so I won't have to pay my bill?" When I receive questions like these, my first suggestion is to step back from the fee issue and look at the bigger picture. No one likes having to pay an additional fee. In this instance, the Montana Legislature concluded it was the only option available to protect a crucial natural resource in Montana.

It is important to remember that a water right is a property right. This property right can be sold, leased,

changed, or used according to the water right's provisions. Depending on where you live in Montana, how much water is available, and when the water is available, a water right may be a very valuable property right. What happens if a downstream state or Canada wants some of Montana's water--can we protect our right to keep it in the state and put it to beneficial use? The completion of a statewide water adjudication will put Montana in the best position to defend its use of water in the state. That provides a benefit to most, if not all, of Montana's citizens. So, the question is, how can the state get it done in a timely and efficient manner?

In the beginning...During the 1972 Montana Constitutional Convention, the framers of the new constitution dealt with water rights as provided in Article IX, section 3:

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records. (emphasis added)

Before the 1972 constitutional provisions were adopted, there was no requirement to file any kind of paperwork in order to have a water right--a water user simply had to put the water to beneficial use. If they chose to do so, water users could file paper work with their county, but it was not a requirement. For those who did, there was no centralized record system to keep track of the filings throughout the years. In disputes involving water uses, a District Court determined by order (or decree) who had rights to what water, when they could use it, and a ranking of seniority (or who got their water first, second, and so on).

The constitutional language underlined above shows the significant changes adopted in the 1972 Constitution. The Constitution protected water rights that existed prior to 1972. Unfortunately, the state had no idea what those water rights were. To resolve the problem, the Montana Supreme Court issued an order that required all water users that had put water to a beneficial use before 1972 to file a "claim" for that water. Those who did not file forfeited any claim to that water. The Legislature extended the deadline a couple of times, and those who filed after the initial deadline have what are called "late claims". These late claims are treated a little bit differently in a decree. The filing requirement mandated by the Constitution enabled the state

(through the Department of Natural Resources and Conservation) to establish a centralized record system.

Post Claim Filing...Another problem is determining whether there is enough water to go around. In addition to water claims that were put to beneficial use before 1972, there have been new appropriations for water that have since been put to beneficial use. New appropriations are subject to water being available after a decree is issued in a basin. DNRC and the Montana Water Court have been adjudicating water rights for almost 30 years. Now that everyone has filed a claim, DNRC is required by state statute to examine each claim to ensure that the place of use, flow rate, volume, point of diversion, etc., are accurate. DNRC completes the examination under rules adopted by the Montana Supreme Court. After DNRC has examined all of the claims in a basin, the information is sent to the Montana Water Court. If DNRC identifies a potential problem or inconsistency with a water right during the examination, it attaches an "issue remark" to the claim to be addressed later by the Water Court if the claim does not receive an objection from another water user. The Water Court is responsible for compiling all of the claims in a basin into a preliminary decree, submitting that information to the public and other water users for any objections, finally resolving any issue remarks and objections to claims, and issuing a final decree.

The ability of the Water Court and DNRC to complete this work is subject to funding from the Legislature. When the program was started, DNRC had almost 30 staff for claims examination. In the mid-1980s, however, funding was reduced significantly and the number of staff working on claims examination fell to 8 people. Claims examination was almost at a standstill.

2003-2004 EQC interim study...The legislative Environmental Quality Council studied Montana's adjudication process during the 2003-04 interim. The EQC looked at all aspects of the statewide water adjudication, including the role of the Water Court and DNRC. The committee also took public comment at all of its meetings, and one of the major issues raised was the timeliness of the adjudication. Adjudication had already taken a significant amount of time and it appeared that it would take another 35 to 40 years just to finish examining the claims, let alone getting them through the Water Court and into decrees that could be used by water users to enforce their water rights and ensure that they received the water in the amount and at the time they were supposed to.

As a result of the study, the EQC recommended legislation (HB 22) to impose a fee on all water users in Montana. Legislators on the EQC recognized that increasing the pace of the adjudication, while still completing accurate decrees, was going to require additional funding for the Water Court and DNRC to hire staff to get the job done. The EQC asked DNRC and the Water Court how much money it would take to get the adjudication done through the first decree phase in 15 years--10 years to complete claims examination and 5 years for the Water Court to finish all of the decrees. It was this amount (\$3.1 million a year) that the

fees in HB 22 were based on. The fee is assessed every other year to reduce administrative costs. Based on the bills that were sent out, the percentage of the fee billed per category is within 1/100th of a percent. So, if all water users pay their bills, the goal of \$3.1 million a year or \$6.2 million for each billing cycle should be realized.

What does HB 22 do?...The primary purpose of HB 22 is to assess a fee for each water right up to a cap of 20 water rights per entity for most purposes. The EQC did not want to throw money at a problem--they wanted DNRC and the Water Court to get the job done. The legislation includes benchmarks that require the DNRC to complete a certain number of claims examinations each year or else the fee, and the associated funding for DNRC and the Water Court, are terminated. This will ensure that all of the claims are examined by 2015. If DNRC doesn't perform, it doesn't get the funds to pay its staff.

Fee assessments for the first billing cycle were sent the end of December 2005 and were due by the end of January 2006. If a reminder bill has to be sent or an assessment is not paid when due, then penalty and interest provisions apply. The Department of Revenue can use a variety of mechanisms to collect from an entity that does not pay its assessment. HB 22 also provides that a lien may be attached to a water right if the fee is not paid. This should be the last option pursued.

A water user may be listed on the DNRC database as more than one entity. For example, a person may have water rights under a company name and water rights under his or her individual name. As such, the water user will receive two separate assessments and is required to pay both bills. DNRC has determined that each entity is subject to the cap, so the company would have to pay on a maximum of 20 water rights and the individual would have to pay on a maximum of 20 water rights.

Billing problems...Some problems have occurred during the first billing cycle. For example, the bill may have been sent to an entity that no longer owns the property or to a spouse who is listed second on the water right. In addition a water user may believe that the bill doesn't accurately reflect the fee that the water user should be required to pay.

A legislator who gets these types of questions, should direct constituents to the DNRC HB 22 website. There is a form on the website that outlines the appeals process that water users can follow, a FAQ page, a link to the Natural Resource Information System (NRIS) website where water users can find their water right and a water right abstract, and other valuable information. The website is: http://dnrc.mt.gov/house_bill22/default.asp

In some instances, people are getting bills for property that they have sold and no longer own the water rights. Outlined below is a process to follow and clarifies the connection between the paperwork filed with DNRC and the actual transfer of the water rights with the deed.

If the deed is silent regarding water rights, the water rights automatically transfer with the property. Unless the

seller specifically withheld all or part of the water rights from the sale, the water rights were transferred to the new owner.

Now that the legal "ownership" question is answered, the question is why is the information not correctly entered on DNRC's database? Each real estate transaction should be recorded on an ownership update form (until last session, it was referred to as a realty transfer form). This form is required to update the ownership records in the DNRC database. It does not affect the legal ownership of the water right. Below are suggested courses of action to determine what happened if the DNRC database does not contain the correct information:

(1) The seller should review the closing documents to determine if an ownership transfer form was signed and the fee for the transfer was paid. The fee for filing an ownership update form is \$50.

(2) If the form was signed and the fee paid, the seller should contact the title company to determine if the paperwork was filed with DNRC. The seller may have done everything that the seller was required to do, but for some reason the paperwork either wasn't filed or the information may have been incorrectly entered on the DNRC database. The first place to find out what may have happened is the title company.

(3) If a form was not signed, the seller and buyer need to discuss the options for sending in the ownership update information. In some instances the seller pays the filing fee, in others the buyer pays, and in some the seller and buyer split the cost of the filing fee.

Contact Information...DNRC is receiving hundreds if not thousands of phone calls a day from water users, so any information that a person can find on the website will certainly save the constituent and DNRC time, effort, and frustration. Again, the DNRC website is http://dnrc.mt.gov/house_bill22/default.asp

The lead staff person at Legislative Services Division for water adjudication and the provisions of HB 22 is Krista Lee Evans, research analyst, Legislative Services Division. She can be reached at (406) 444-1640 or kevans@mt.gov.

A copy of the EQC water adjudication study is available at: <http://leg.state.mt.us/content/publications/lepo/2005waterreport.pdf> or you can call Legislative Services Division to receive a copy.

ENERGY AND TELECOMMUNICATIONS COMMITTEE

Committee covers a variety of topics...The Energy and Telecommunications Interim Committee met on Jan. 19. The committee took action on two assigned studies and heard a panel discussion on electrical transmission. Specific matters covered and actions taken were:

- Hal Harper of the Governor's Office reported on activities resulting from the conference last October on Montana's energy future.

- Tom Ebzery, an attorney for Qwest Communications, discussed a proposed bill draft dealing with the regulation of telecommunications. Because the committee is soliciting more information about the proposal, it did not take action on the draft.
- As part of the SJR 36 study, committee staff presented an overview of distributed energy generation. The committee directed staff to research problems related to safety and interconnection. If solutions to these two problems appear feasible, then the committee may request draft legislation that would provide funding for targeted distributed energy generation pilot projects. The members also asked for information about what other states have done that may indicate longer term economic effects of distributed energy generation.
- A panel, including representatives of the U.S. Department of Energy, the Bureau of Land Management, Northern Lights, and the Pacific Northwest Economic Region, discussed transmission issues in Montana and the region.
- Greg Jergeson of the Public Service Commission reported on the commission's activities.
- The committee voted to replace its SJR 39 study of creating an energy planning and coordinating entity for Montana with a proposed bill draft [LC0038] that would create a transmission infrastructure authority for the state.
- The committee also voted to consider draft legislation [LC0037] regarding the vertical integration of default suppliers of electricity. The committee will consider LC0037 and LC0038 at its next meeting.

Committee to meet in April...The Energy and Telecommunications Committee is scheduled to meet April 20 and 21.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee and subcommittees meet in February...The two subcommittees of the Education and Local Government Interim Committee are scheduled to meet on Thursday, Feb.23, and the full committee will convene on Friday, Feb. 24.

SJR 11 study highlights meeting...The SJR 11 study continues to be the Local Government subcommittee's

primary focus. The subcommittee will hear from members of the SJR 11 work group, which has been meeting monthly to attempt to arrive at some consensus solutions to identified problems associated with land use planning--including subdivision review, local land use regulations, and zoning.

One of the problems that continues to surface is the absence of technical assistance for local government planners and the inability of many planning offices to engage in long-range planning and development of regulations because of the crush of their day-to-day review responsibilities. Prof. John Horwich, chair of the University of Montana School of Law's Land Use Clinic, will be on hand to discuss the research he has been conducting into how other states handle technical assistance for planning and his ideas for Montana. Horwich will be joined by David Cole, administrator of the Department of Commerce's Community Development Division, and Tammy McGill, a professional planner and immediate past president of the Montana Association of Planners, for a panel discussion about technical assistance needs and options the subcommittee may consider.

PEPB subcommittee to meet with Board of Regents...The Postsecondary Education Policy and Budget subcommittee will meet jointly with the Board of Regents. For information about the meeting, visit the subcommittee website by going to the Education and Local Government webpage and clicking on the "Postsecondary Education Policy and Budget Subcommittee" link.

You may also contact subcommittee staff Alan Peura, Legislative Fiscal Division, at (406) 444-5387 or apeura@mt.gov.

Education topics on full committee's agenda...In addition to detailed updates from its subcommittees, ELG's agenda on Feb. 24 will consist of a presentation about the Board of Public Education, including an overview of its functions and projects in which the board is engaged. ELG will also hear the latest school funding developments from staff of the Quality Schools Interim Committee and may discuss whether there is any work related to K-12 funding that ELG could assume for the remainder of the interim.

For more information about ELG or the Local Government Subcommittee, contact Leanne Kurtz at (406) 444-3593 or lekurtz@mt.gov. ELG's website and the subcommittees' webpages will be updated in early February.

STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

On-line filing of campaign finances on March agenda...The State Administration and Veterans' Affairs Interim Committee is scheduled to meet on Monday, March 6 in Room 102 of the Capitol. (This is a change from the original schedule.) The public is invited to attend the meeting and written comments are appreciated.

Gordon Higgins, commissioner of political practices, will discuss initiatives that his office has undertaken in regard to on-line filing of campaign finances and other information. Maj. Gen. Randy Mosley, director of the Department of Military Affairs, will report on activities affecting the Montana Guard and Reserves. Representatives of the Office of the Secretary of State, the Department of Administration, and other state agencies may also provide updates to the committee. A variety of other items are expected to be on the agenda. Details of the March meeting will be posted to the committee's webpage as soon as possible. You can also contact Dave Bohyer, committee staff, at (406) 444-3064 or dbohyer@mt.gov.

REVENUE AND TRANSPORTATION COMMITTEE

Committee to meet in February...The Revenue and

Transportation Interim Committee is scheduled to meet Feb. 16 and 17 in Room 137 of the state Capitol. Topics for the Thursday meeting include a general fund revenue report, a discussion of developing a procedure for the transfer of tax and revenue information from the Department of Revenue to the Legislative Fiscal Division and the budget office, an economic impact statement related to a Department of Revenue rule change on Montana source income, and a discussion of business taxes. Topics for the Friday agenda include a report on highway safety and a report on the relationship of motor vehicle speed to fatalities from the Montana Department of Transportation and the HJR 44 study of the taxation of oil and gas property.

For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or jmartin@mt.gov, or Dawn Field, committee secretary, at (406) 444-3073 or dfield@mt.gov. Lee Heiman is the staff attorney and can be reached at (406) 444-4022 or lheiman@mt.gov.

THE BACK PAGE

SEX OFFENDERS: A PROBLEM THAT WON'T GO AWAY

By Joe Kolman
Legislative Research Analyst

INTRODUCTION

During his decade as Gallatin County Sheriff, Bill Slaughter worked to put bad guys behind bars. Now, in the midst of his second term as director of the Montana Department of Corrections, part of his job is to see that felons are shaped up and shipped out—back into Montana communities.

But when it comes to ex-cons who committed sex crimes, a lot of people prefer that they never lead a life beyond bars. Like most convicts, sex offenders are eventually released. But the notion of a sex offender living next door or even down the block makes neighbors uncomfortable, to say the least.

Upon learning that a convicted child molester, who was complying with applicable laws, was a new neighbor, a Bozeman resident last year said, "I'll do whatever I have to do to protect my family. I'm not saying I'll do it, but he'll go down by my own hand if need be."¹

That statement underscores what is one of the most controversial and emotional issues in the country today—the management of sex offenders.

"I don't think America knows what to do about it," said Slaughter, whose agency is responsible for managing convicts until their sentences expire. "There's got to be a big conversation in America about what we do about sex offenders."²

Words on the subject are likely to be spoken in the halls of the Montana Capitol come 2007. Last session, lawmakers followed the lead of other states and approved satellite monitoring of some offenders. New legislative trends are sweeping the country, including longer sentences, lifetime monitoring and laws that ban sex offenders from living near many facilities such as schools, daycares, parks, churches, and bus stops. However, these trends raise thorny issues including community safety, the rights of ex-cons, and the willingness of government and its citizens to pay for longer prison terms and monitoring.

Lawmakers understandably want to respond to constituent concerns about sex offenders, but legislation crafted around public opinion—or fear—isn't the answer, said Scott Matson of the Center for Sex Offender Management, an organization sponsored by the U.S. Department of Justice. The public should be involved in developing a sex offender management policy, he said, but that is only one piece of a very complicated puzzle.

Successful sex offender management stems not

from broad, sweeping laws, Matson said, but from regulations and programs that recognize that sex offenders pose different risks and cannot be handled as a single herd.

"If legislators are going to do anything," Matson said, "they should spend money on researching the problem."³

A study of sex offender data and issues in Montana by the Legislative Services Division found:⁴

- Sex offenders can be found nearly everywhere. There are about 1,500 registered sex offenders (see table on p. 17) who call Montana home (not counting another 557 in the prison system). They live in almost every county, and their crimes range from consensual sex with a minor to incest to violent rapes. Many people may live closer to a sex offender than they think. In Missoula County, nearly one of every three residents lives within three football fields of a registered offender.
- Even though sex offenders are required to register with local law enforcement, it's not as if law officers know where they all live. A recent state Department of Justice report shows that the whereabouts of about 5 percent of those required to register is unknown. One offender lists his address as the northwest side of the Reserve Street Bridge in Missoula.
- Nobody knows how dangerous most registered sex offenders really are. Only about one-quarter of registered sex offenders in Montana have been assessed for their likeliness to reoffend. Of those, 84 are deemed Tier 3, or high-risk. Experts say risk assessment is a valuable tool and other states assess a larger portion of their offender population than does Montana.
- While much attention is focused on sex crimes against children, only about one of every seven registered offenders in Montana is known to have assaulted a child under age 16. Of those, 52 registered offenders are deemed as high risks to commit another sex crime.
- In some Montana cities, correctional programs designed to successfully reintroduce convicts into the free world don't admit sex offenders, effectively relegating some of them to sit in prison until their sentences expire and they are released with no guidance or support. It may also partly explain why Missoula and Yellowstone counties, which have programs that accept sex offenders, have some of the highest numbers of sex offenders per capita in the state.
- Banning sex offenders from living within 1,000 feet of a school or daycare would mostly drive them out

³ Interview, 11/13/2005

⁴ Electronic data and guidance were graciously provided by the state Department of Justice, Randy Haight of Public Health and Human Services, and Mark Tripp at the Geographic Information Services Bureau.

¹ KTVM, 8/9/2005

² Interview, 12/15/2005

of Missoula, Helena, Bozeman and Billings and into the more rural parts of the state, away from many housing opportunities, jobs, treatment professionals, and the watchful eyes of police and neighbors. In Yellowstone County, nearly two-thirds registered offenders already live within 1,000 feet a school or daycare.

- Implementing a Florida law in Montana that extends prison sentences for sex offenders would cost an already-strapped Corrections Department more than \$29 million over a 10-year period.

LEGISLATIVE HISTORY

Experts say sex offender legislation should be based on research and analysis, but they contend that doesn't always happen.

"Social policy should be solidly grounded in empirical evidence and informed by theoretical literature," two Florida researchers wrote in a 2005 article. "It is clear that public concern about sexual crimes sometimes leads to legislation that is not driven by data or science but by outrage and fear."⁵

The history of sex offender laws in America follows a tragic timeline—many laws are named after murdered children—leading to regulations that may not protect us as much as we'd like to believe. Montana law evolved roughly in the shadow of the examples set by other states and laws mandated by Congress.

In 1989, Montana followed the lead of other states and required sex offenders to register their whereabouts for 10 years or face a misdemeanor charge.⁶

The abduction in Minnesota later that year of 11-year-old Jacob Wetterling—and the suspicion that he was taken by a sex offender—led to the creation of a Minnesota law that was later the basis for the national Jacob Wetterling Act of 1994. The Act required all states to create registries of sexually violent offenders or those who commit crimes against children. It also required annual address verification.⁷

In 1995, Montana lawmakers passed a new law that required registration for life unless the offender remained law-abiding for 10 years and convinced a district court that no longer registering did not pose a threat to public safety. The penalty for not registering was increased to a felony. The name of the offender and other information deemed necessary for public safety were made public.⁸

The state of Washington created the nation's first sex offender notification law in 1990 after several highly publicized sex crimes, including the rape and murder of a 7-year-old boy in a park by a man with a history of sexual violence.⁹

In 1996, the Wetterling Act was amended in the wake of the rape and murder of 7-year-old Megan Kanka in New Jersey by a twice-convicted child molester who lived on her block. Megan's Law required that communities be notified when a sex offender lives in the neighborhood.¹⁰

In 1997, Montana lawmakers retroactively applied the registration law to ex-cons under state supervision in 1989 or later. Tier levels were to be assigned to offenders based on the likelihood that they would reoffend. The tier level determines what information is released publicly and how often addresses are checked.¹¹

More national legislation followed and in 1999 Montana provided that the name and address of any registered offender would be made public, information now available on the Internet. In 2002, lawmakers required an offender to register in a county within 10 days of moving there.¹²

COURT TESTS

The Montana Supreme Court has upheld the state laws in recent years, but not without debate.

In 2003, the court ruled against Robert Mount, a convicted sex offender charged with failing to register under the retroactive portion of Montana's law. He argued to the district court that the registration as applied to him was an *ex post facto* law, or a law passed after the commission of a crime, which makes the punishment greater than it was when the act was committed.¹³

Arguing on behalf of Mount, the American Civil Liberties Union said registration is a punishment because all offenders—regardless of their likelihood to reoffend—are required to register and that information is made public not only to those in the neighborhood, but worldwide via the Internet. Other states only make public information about offenders who committed certain crimes or are assessed as high risk.¹⁴ Mount has not been assessed for his risk to

⁹ Community Notification and Education, Center for Sex Offender Management, 2001.

¹⁰ Megan's Law: A Review of State and Federal Legislation, 1997. Washington State Institute for Public Policy.

¹¹ Department of Justice. <http://www.doj.state.mt.us/svor/historyregistry.asp>

¹² Department of Justice. <http://www.doj.state.mt.us/svor/historyregistry.asp>

¹³ ACLU of Montana web page. www.aclumontana.org

¹⁴ Community Notification and Education, Center for Sex Offender Management, 2001

⁵ Levenson, Cotter, The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd? *International Journal of Offender Therapy and Comparative Criminology*, 2005.

⁶ Department of Justice. <http://www.doj.state.mt.us/svor/historyregistry.asp>

⁷ Megan's Law: A Review of State and Federal Legislation, 1997. Washington State Institute for Public Policy.

⁸ Department of Justice. <http://www.doj.state.mt.us/svor/historyregistry.asp>

reoffend.

"This scheme more closely resembles a shaming punishment than a system intended to protect people from future harm," the ACLU contended.¹⁵

Reflecting the majority opinion, Justice James C. Nelson wrote, "Any shame that Mount may experience results from his previous conviction, not from disclosure of that fact to the public. Indeed, Mount's conviction and sentence is already a matter of public record. Furthermore, the availability of the information about Mount provides parents with the ability to protect themselves and their vulnerable children. Moreover, protection from the recidivism of sex offenders is the Act's paramount purpose.

"We conclude that the registration and disclosure requirements of the Act do not constitute historical shaming or punishment."¹⁶

In a case decided last fall, the court ruled that Kim C. Wardell could be designated as a persistent felony offender—thus increasing the length of his sentence—because he was convicted of failing to register as a sex offender, his second felony within five years of discharging the sentence for his previous sex crime.

In dissent, Justice Patricia O. Cotter wrote that while the court said in the Mount case that the registration law was not meant to be punitive, now it was being used to punish Wardell—who is listed as low risk to commit another sex crime.

"What we said in Mount has evidently been relegated to the dustbin," Cotter wrote. She continued, "Either the intent of the Act is nonpunitive as we unequivocally declared in Mount, or it is punitive, as we have effectively declared here today."

"We cannot have it both ways."

But in concurring with the majority, Justice W. William Leaphart wrote that while the registration law is nonpunitive, it could be enforced by punitive, criminal sanctions.

That misses the point, wrote Justice Nelson, a dissenter in this case. The law says only that a fine or prison time "may" be imposed for failing to register.

"We have, thus effectively created a crime—failure to register—which may be severely punished, lightly punished, or punished not at all in the sole discretion of the sentencing judge," Nelson wrote. He added that it is inevitable that the section and possibly the registration act could be subject to further legal challenges.¹⁷

DO LAWS WORK?

While the nation's courts uphold the constitutionality of registration and notification laws, some researchers say their effectiveness in reducing recidivism is largely unproven

and there are many downsides.¹⁸

They may create a false sense of security—simply knowing a sex offender lives in the area does not make it safe. Second, registration lists are not always updated regularly or checked for accuracy. A study in Washington recently found that a growing number of sex offenders were listing their addresses as "homeless" possibly as a way to get out of registering.¹⁹

In Montana, law requires that verification letters be sent annually to all offenders and quarterly to the high-risk sex offenders. A recent report from the Department of Justice, which runs the statewide registry based on information supplied by local law enforcement agencies, found 72 offenders, or about 5 percent of the total, whose whereabouts are unknown.²⁰ In addition to the man who lives under a bridge in Missoula, another sex offender who drives a semi lists his address as "lives in truck."²¹

Some local law enforcement agencies frequently check on sex offenders. Detective Bryan Fischer of the Helena Police Department estimates that he spends a quarter of his time following up on tips about registered sexual and violent offenders and their addresses. However, Fischer acknowledges that not all communities in Montana may have the resources to be so thorough.²²

Montana does do better with verification than other states. Nationally, it is estimated that almost one-fifth of those required to register are missing or fail to give a current address, according to the National Center for Missing and Exploited Children.²³

The biggest drawback to the laws may be how they affect the sex offender's ability to blend back into a community and remain a law-abiding citizen.

Men and women who commit sex crimes—especially against kids—are the scourge of our society. They are regarded with disgust even by murderers and druggies. In the political arena, they have few defenders. But they need the same things as the rest of us to be successful: a job, a home, and a network of supporters. For a sex offender, whose picture may be published in the local paper and broadcast on television, those things can be difficult to find.

In some cases, that public scrutiny, in addition to illegal harassment, could contribute to the convict committing another sex crime.

Although most registries note that it is illegal to

¹⁸ Managing Sex Offenders in the Community: A National Overview, 2003.

¹⁹ Seattle Times, 12/11/2005

²⁰ Joe Wodnik e-mail, 1/5/2006

²¹ Sex offender database listings for Kim R. Miessner and Fred E. Hunsaker of Missoula

²² Interview, November 2005

²³ USA Today, 8/24/2005

¹⁵ ACLU of Montana web page. www.aclumontana.org

¹⁶ State v. Mount, 2003 MT 275, 317 Mont.481, 78 P.3d 829 (2003)

¹⁷ State v. Wardell, 2005 MT 252, 329 Mont. 9, 122 P.3d 443 (2005)

harass a sex offender, at least some forms of harassment probably occasionally occur. An extreme case of vigilantism apparently occurred last year in Washington. Allegedly motivated by the Joseph Edward Duncan III case in Idaho, a man found the address for two sex offenders, knocked on their door, and fatally shot each of them in the head. Police suspect he may have also threatened 25 other high-risk offenders.²⁴

Duncan, the sex offender who allegedly killed four people in Idaho and kidnapped 8-year-old Shasta Groene, wrote on his website before the murders that laws governing offenders "in fact create an even more dangerous class of criminals" by "forcing them to feel like outcasts."²⁵

One sex offender told a researcher: "You taunt a dog long enough ... it's going to bite. And that's exactly what this law does. It makes John Q. Public taunt the sex offenders. And sooner or later, something is going to snap."²⁶

Many of the problems with sex offender registration and notification laws could have been avoided, one study concludes, with more planning and research. The laws should be more uniform, less punitive, and more preventative. The costs of implementing the laws, enforcing them, and the effects on law-abiding citizens should have been more thoroughly analyzed.²⁷

"Until we look at them closely and research their potential effectiveness, there is concern that laws designed to protect our citizens, may, instead, do more damage than if they did not exist at all."²⁸

That may be good advice as lawmakers in Montana and nationwide consider new proposals for managing sex offenders.

LONGER SENTENCING; MONITORING

In keeping with history, new legislation aimed at sex offenders is fueled by horrific, high-profile crimes where strangers snatch unsuspecting children. Children are often victims of sexual abuse, but people who knew the victim--relatives or friends--committed more than two thirds of all sex crimes reported nationally in 2003.²⁹ Stranger assaults--though they garner much attention--account for only 7 percent of sex crimes against children.³⁰

Blair Hopkins, the clinical services administrator at

the Montana State Prison, said pedophiles account for about 4 percent of the sex offender population, with only a fraction of those being the most dangerous. In Montana, Hopkins said, there may be only three of those offenders living free and another six in prison.

"These are the guys who grab the headlines and create huge knee-jerk reactions from the communities and lawmakers based on fear and votes alone," Hopkins said.³¹

Sex crimes against children have dropped dramatically in the last decade. To be fair, some of the decrease is attributed to greater incarceration of offenders and heightened public concern, which are linked to well known past cases and legislation.³²

Still, cases such as those of Jessica Lunsford and Shasta Groene continue to serve as the basis for longer sentences and stricter monitoring.

Before Lunsford's alleged killer stood trial, Florida lawmakers in 2005 passed the Jessica Lunsford Act after the 9-year-old girl was raped and killed. A convicted sex offender, who failed to register with police when he moved to a location 2 miles from the Lunsford house, is charged with the crimes. The law provides a mandatory minimum sentence of 25 years for those convicted of molesting a child younger than 12 and mandates lifetime GPS surveillance after release from prison, among other requirements.³³

Oprah Winfrey and Bill O'Reilly, television talking heads who likely agree on little, are using their national stages to call for longer prison sentences for sex offenders.

"We can change the laws so that when, in this country, a child is molested the first time, that person is put behind bars and is never let out," Winfrey said. "Never let out! I'm so sick of it."³⁴

O'Reilly trumpets the need for states to implement versions of Jessica's Law. His website lists Montana as one of seven states "headed in the wrong direction" when it comes to getting tough on sex offenders. (There does not seem to be any documentation as to what determines the label, which is disputed by Corrections Director Slaughter). The site includes an e-mail form addressed to state governors that reads, in part, "Far too many young boys and girls have been brutalized by sex predators that should have been locked away. These abusers need to be kept off the streets and out of our neighborhoods."³⁵

Slaughter understands the mentality of "lock 'em up and throw away the key." To that, the man whose agency can't afford to pay its bills now says simply: "Write me a check."

²⁴ The Seattle Times, 9/7/2005

²⁵ The Spokesman Review, 7/3/2005

²⁶ Managing Sex Offenders in the Community: A National Overview, 2003.

²⁷ Ibid.

²⁸ Ibid.

²⁹ U.S. Department of Justice, Bureau of Statistics: <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvus/current/cv0327.pdf>

³⁰ Omaha World-Herald, 11/20/2005

³¹ E-mail, 1/18/2006

³² USA TODAY, 8/24/2005

³³ Bradenton Herald, 10/23/2005

³⁴ The Spokesman-Review 10/5/2005

³⁵ <http://www.billoreilly.com/outragefunnels>

If a version of Jessica's law with extended sentences were enacted here, the agency predicts it would cost a bit more than half a million dollars a year for each class of 24 offenders. That means in the second year, it would cost \$1 million, the third year would cost \$1.5 million and so on. Over the first 10-year period after such a law took effect, it would cost the state more than \$29 million.³⁶

While electronic monitoring is less expensive, it could still cost money that the Corrections Department doesn't have. Under the Montana law passed in 2005, level 3 offenders, those most likely to commit another sex crime, would be required to wear a satellite monitor while on parole until the sentence is completed. The department estimates the monitoring would cost about \$3,100 a year per offender.³⁷

The Corrections Department predicted last December it would need nearly \$12 million for operations through July and will face continued budget shortfalls.³⁸

The law does allow the department to charge the offender up to \$4,000 a year from the offender to cover the costs. But that \$258 a month could be on top of \$300 a month the offender may be required to pay for counseling—which arguably helps prevent future crimes too. Those financial burdens would be placed on people who already have a hard time finding a place to live and a steady, good-paying job due in part to registration and notification laws.

"Does it get to a point where this offender has little chance for success because they are so focused on compliance?" said Mike Ferriter, the state administrator for Adult Community Corrections.³⁹

RESIDENCY BANS

An increasingly popular attempt to deal with sex offenders is residency bans. A recent study found that 14 states have residency requirements. Among the strictest is an Iowa law, which recently overcame a court challenge. It bans certain offenders from living within 2,000 feet of a school or licensed daycare.⁴⁰

In Montana, a judge may impose such restrictions at sentencing, but there isn't an easy way to track those bans or their enforcement on a statewide basis.

One state wrangling over a statewide residency ban proposal this year is Nebraska.

"I am saying we need to do everything we can to protect kids from predators," said Nebraska Sen. Gwen Howard, who favors a statewide residency ban. "They pick

easy targets. The thing to do, at a minimum, is to distance them from children." Howard added that she supports longer sentences, but she thinks electronic monitoring is too expensive and treatment is ineffective.⁴¹

However, the chair of Nebraska's Judiciary Committee said restrictions wouldn't solve safety problems because some offenders simply refuse to register. Others note that just because offenders cannot live near a school, that doesn't stop them hanging around wherever kids play.

"I'm weary of politicians pounding their chests and saying the 2,000 foot restriction is a solution," said Sen. Pat Bourne. "Hogwash. It's a lazy, simplistic approach and it does nothing ..."⁴²

There is little evidence to support the theory that residency bans actually prevent sex crimes, said Matson, the national researcher.

While 1,000 feet may not sound like much distance to put between you and a sex offender, geographic studies show that such buffers put large segments of cities off-limits to sex offenders.⁴³

Even in a rural state such as Montana, buffers could significantly cut down on the housing options available for offenders, the Legislative Services Division study shows.

If Montana were to forbid sex offenders from living within 1,000 feet—about three football fields—of a school that would mean offenders could not live in areas where 12 percent of Montanans already live.

More than a third of the sex offenders currently living in the counties of Missoula, Gallatin and Lewis and Clark reside within 1,000 feet of a school or daycare. In Yellowstone County, almost two out of every three registered offenders live that close to a school or daycare. The analysis shows that within the cities of Helena, Missoula, Billings (see map on p. 17) and Bozeman a 1,000-foot buffer around schools and daycares would effectively push most sex offenders out of those cities.⁴⁴

If enforced, residency bans can relegate sex offenders to rural areas, away from jobs, housing, and transportation. Buffer zones also can remove offenders from social services, mental health facilities, and family support systems. It has even been suggested that sex offenders will end up in areas mostly populated by senior citizens because those places are less likely to have schools and parks.⁴⁵

"When people feel they have nothing and are hopeless, then that actually causes an increase in the

³⁶ Mike Ferriter e-mail, 1/19/2006

³⁷ Mike Ferriter e-mail, 1/19/2006

³⁸ The Montana Standard, 12/7/2005

³⁹ Interview, 12/15/2005

⁴⁰ Levenson, Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?* International Journal of Offender Therapy and Comparative Criminology, 2005.

⁴¹ Omaha World-Herald, 10/31/2005

⁴² Ibid.

⁴³ St. Petersburg Times, 5/15/2005; Riverside Press-Enterprise, 12/31/2005; Des Moines Police Department, 9/15/2005

⁴⁴ Due to limited data, select areas were analyzed.

⁴⁵ Riverside Press-Enterprise, 12/31/2005

likelihood that they'll return to the life of crime," said Dr. Jill Levenson of the Center for Offender Rehabilitation and Education in Florida.⁴⁶

Minnesota and Colorado studied the relationship between residency and recidivism and found that the potential negatives outweighed the possible benefits.⁴⁷

"These residency laws tend to be driven by high-profile cases of stranger abductions. That should not be the basis for broad sex offender policies," said Levenson. "No one is advocating for sex offenders. We are advocating for policies that will be more effective in protecting kids."

"Let's put our resources into monitoring predatory pedophiles and people who are truly dangerous."⁴⁸

WHO IS DANGEROUS?

Being able to determine the risk that a sex offender may commit another crime is key to a successful sex offender management program.⁴⁹

But only about a quarter of the registered offenders in Montana have been assessed for their risk to reoffend—leaving the public little choice but to assume the worst about the rest.

"We've labeled all these guys like they're all pedophiles," said Slaughter, adding that more needs to be done to inform the public about which offenders pose the most danger. "What we've done is made it less safe out there."

On the other hand, since most registrants are not assigned a risk level, it's possible that some very dangerous sex offenders may go unnoticed.

In Montana, sex offender assessment may be done by a judge at sentencing or by Department of Corrections staff when the convict leaves prison. But offenders may not have a tier level designation if they were incarcerated prior to 1997, when the system was enacted.⁵⁰

Criminals not sentenced directly to prison—those who get deferred or suspended sentences or community placement—may not be assessed. That could include a majority of sex offenders, said Hopkins, who does risk assessments at the prison. And not all judges assign risk levels nor understand the designation, he added.

"Personally, I feel that the judge should always assign a tier at sentencing, based on the recommendations provided in the psycho-sexual evaluation, which is almost

always completed before sentencing," Hopkins said. "However, most judges are completely naïve about what an accurate tier designation really is."

If an offender moves here from out of state without a risk level assigned elsewhere, that offender probably won't have one here either.

Other states seem to make more of an effort to assess a larger percentage of registered offenders. Several have designated risk assessment programs or boards.⁵¹

In North Dakota, for example, it is estimated that nearly all of the more than 900 registered sex offenders are assigned a risk level by a committee that includes a corrections official, a victim advocate, and a law officer. In 2001 when the committee was formed, about 700 registered offenders needed evaluations. Using available documentation and sometimes in-person interviews with the offenders, the committee was assessing up to 40 offenders a month.⁵²

While risk assessment costs money, it is a valuable tool for making caseload determinations once an offender is released from prison, says Matson, a researcher at the Center for Sex Offender Management.

"We encourage jurisdictions to consider risk assessment as an ongoing process, as offenders' need change over time—so too must supervision and treatment personnel's methods of managing them," Matson said.⁵³

THE TREATMENT DEBATE

Whether or not sex offender treatment works is a subject of debate. Hopkins, the clinical services administrator at Montana State Prison, believes that in many cases, treatment can help prevent sex offenders from committing another crime. Some studies agree with him, others do not.

There are many variables to consider, including the type of crime committed, the type of therapy, whether the counseling takes place in prison, and how willing the offender is about participation.⁵⁴

What most experts conclude is that there is not a "cure" for a sex offender, much like there is not a cure for alcoholism. But in the same way that treatment can help an alcoholic avoid booze, therapy can teach a sex offender how to recognize and avoid the situations that can lead to another crime.⁵⁵

And it's cheaper than prison.⁵⁶

⁴⁶ Des Moines Register, 10/11/2005

⁴⁷ Levenson, Cotter, The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd? International Journal of Offender Therapy and Comparative Criminology, 2005.

⁴⁸ Omaha World-Herald, 11/20/2005

⁴⁹ Center for Sex Offender Management: An Overview of Sex Offender Management, 2003.

⁵⁰ Montana Department of Justice: <http://www.doj.state.mt.us/svor/offendertypes.asp>, Hopkins e-mail, 1/18/2006

⁵¹ Center for Sex Offender Management

⁵² Interview, Diane Carpenter of the North Dakota Attorney General's Office.

⁵³ Electronic message, 1/10/2006

⁵⁴ Managing Sex Offenders in the Community: A National Overview, 2003

⁵⁵ USA Today, 8/24/2005

⁵⁶ Managing Sex Offenders in the Community: A National Overview, 2003.

One of the reasons for the deficit being faced by the Corrections Department, Slaughter said, is that the agency cut many of its rehabilitation programs a couple of years ago during leaner times. "We paid for that mistake," Slaughter said. "Those offenders who didn't get programming when they were with us before are back."⁵⁷

Sex offenders in Montana State Prison must undergo the first phase of treatment, which is basically educational.⁵⁸ Admitting the crime is not required. The phase lasts about 5 months. Under the second phase, which can last 3 years, convicts admit the crime and try to relate to the victim.⁵⁹

A University of Montana study found that some of those who complete the second phase of treatment continue to sit in prison after the conclusion of treatment, possibly decreasing the effect.⁶⁰ Hopkins contends the problem is that the waiting list for treatment is so long—there is the equivalent of 3 full-time therapists for about 450 sex offenders—that many prisoners are released before ever getting through phase two.

Phase three of the treatment is a periodic refresher course that can be done in prison or in the community, but only for those who finish phase two.

The success of any type of treatment may be hampered by the trend of increasingly punitive measures aimed at sex offenders, including longer sentences, one study concluded. Longer sentences, strict registration laws and the threat of civil commitment give sex offenders little reason to face their problems and seek treatment.⁶¹

In a perfect world, Hopkins said, many of those offenders in prison would be put on supervised parole and continue with treatment. That would be less expensive than prison and would allow prison staff to focus on those more serious offenders who remain incarcerated.

INTO THE COMMUNITY

Finding a place in a community for a sex offender—even one who is under supervision and receiving treatment—isn't easy. Prerelease centers, where parolees live together in a facility, are nonprofit organizations that contract with the Department of Corrections and use screening committees to select inmates. Centers in Butte, Helena, and Great Falls don't have any sex offenders. A new program in Bozeman likely won't accept them either, said Ferriter, the adult community corrections administrator.

Sue Carroll, director of the Helena prerelease

center, said the 4-year-old program is still proving itself to the community. No policy against admitting sex offenders exists, she said.

"The door isn't closed, it just hasn't occurred to date," Carroll said.⁶²

Since the opening of the Butte Pre-Release Center in 1983, the facility has never accepted a sex offender, said Steve McArthur, the director of Community Correctional Programming.⁶³ While he acknowledges that the sex offender population is growing and in need of management, he said educating the public about sex offenders—including the different types of treatments and risk levels—is difficult.

McArthur also said there are not enough therapists in Butte to serve sex offenders, an assertion disputed by Hopkins.

"All major towns ... have well-trained and certified sex offender treatment specialists actively treating this population and willing to treat more," said Hopkins, also a member of the Montana Sex Offender Treatment Association.⁶⁴

The sex offenders that are accepted into prerelease centers go to Billings and Missoula. That may be part of the reason that those areas have more sex offenders per capita than many other counties in the state.

Statewide, there is one registered sex offender for every 622 residents (see table on p. 17). Missoula and Yellowstone counties have one offender for every 438 and 514 citizens respectively, which places them near the top of the list for highest concentrations of sex offenders in the state.

Such a system isn't fair to those communities, said Hopkins. "I think they're getting dumped on."⁶⁵

Cascade County has one offender to every 677 residents, Lewis and Clark County has 865 residents for each sex offender, and Gallatin County has one sex offender for every 1,036 residents. While the Butte Prerelease Center does not accept sex offenders, Silver Bow County still has more sex offenders per capita than many counties, with one registrant for every 561 residents.

Sex offenders also may be enrolled in local intensive supervision programs, which is probably the best way to deal with many sex offenders, Ferriter said. In this program, felons live independently, report to a parole officer four times a week and are subject to electronic monitoring.

But intensive supervision programs have local screening committees too and they are not keen on taking sex offenders either. Even though sex offenders comprise nearly a third of the prison population, they account for less than 3 percent of those felons accepted into the state's pre-

⁵⁷ The Montana Standard, 12/7/2005

⁵⁸ Section 46-18-202, MCA

⁵⁹ Blair Hopkins, interview, 12/20/2005

⁶⁰ Analysis of the Impact of Treatment Programs on Inmate Misconduct and Recidivism, 2004

⁶¹ Managing Sex Offenders in the Community: A National Overview, 2003

⁶² Interview, 1/11/2006

⁶³ Interview, 1/12/06

⁶⁴ E-mail message 1/18/2006

⁶⁵ Interview, 12/20/2005

release and ISP programs.

The department plans to offer more money to pre-release centers that accept any convict who comes straight from prison, including sex offenders.

"That's our latest attempt to push harder to take sex offenders," Ferriter said. "We have tried, and we know the value of it, but ..." ⁶⁶

A proposed special needs prison may take some sex offenders. If money were available, more parole officers could be hired. Still, Ferriter said, there are many hurdles when it comes to integrating sex offenders back into society.

"What we have is not working," Ferriter said. "There is a lot of fear from victims and parents." ⁶⁷

People fear that another sex crime will be committed. But a widely quoted national study found that sex offenders are less likely to be rearrested than non-sex offenders for committing any type of crime. As would be expected, sex offenders are more likely to be rearrested for a sex crime than are non-offenders. Still, only 5.3 percent of sex offenders were arrested again for a sex crime within the three years following their release from prison. ⁶⁸

"The myth is that all sex offenders go out and reoffend," said Hopkins. He points out that between 1988 and 2004, there were 178 Montana inmates who completed phase two treatment and were released. Of those, less than 3 percent committed another sex crime. ⁶⁹

It is generally acknowledged that sex crimes are underreported and that some studies of reoffense rates should be interpreted with caution. However, that underscores the need to convince the public to talk to children about sex crimes and how they can best be prevented, said Matson, the national researcher.

Key to that debate may be the example set by lawmakers. A solid, research-based understanding of the different types of sex offenders and the various ways to manage them could go a long way toward the making of good public policy.

Risk assessment, treatment, supervision, as well as state and local level task forces that research sex offender management techniques, are components of a successful sex offender management program, Matson said. Good policy would foster a comprehensive program that realistically considers how to integrate sex offenders back into society.

"They're not going to go away," Matson said. ⁷⁰

SEX OFFENDER SIDEBARS

The bullet points, graph, map and table below provide additional information about sex offenders.

Components of Effective Sex Offender Management

- Collaboration among agencies that deal with sex offenders and victims.
- A victim-centered approach that includes providing information to the public.
- Specialized risk assessment from the time of arrest through the expiration of the sentence.
- Specialized supervision with officers who have small caseloads and can be involved in an offender's daily life and habits.
- Specialized treatment for the varying needs of sex offenders.
- Successful reintegration into communities must balance public safety with the sex offender's need for a job, housing, treatment and development of supportive relationships.
- Lie detector tests may provide independent information about compliance.
- A registration procedure that collects thorough information and ensures it is readily available to law officers both in and out of state.
- Community notification procedures that include public education on preventing sexual victimization as well as trying to minimize possible negative effects of notification.
- Some states have civil commitment laws that allow sex offenders deemed to dangerous for release to be committed. The laws are controversial and subject to challenge, but none have been overturned.
- Collaborative efforts to stop sex abuse before it occurs, including educating kids about sex crimes.

Source: Center for Sex Offender Management

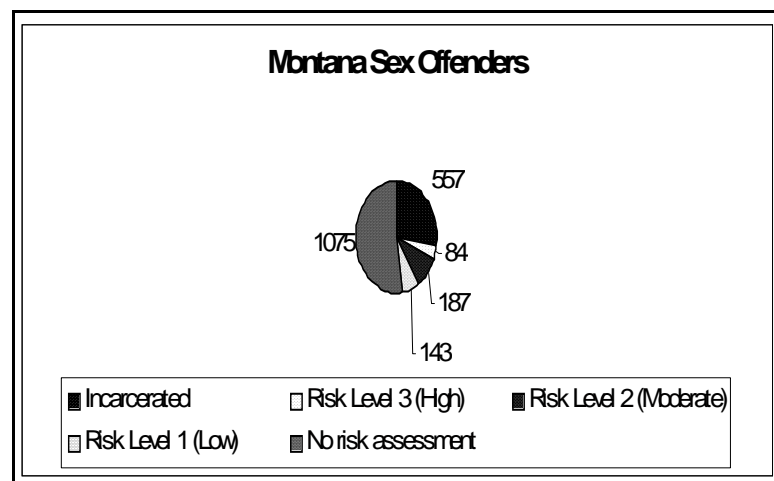
⁶⁶ Interview 1/17/2006

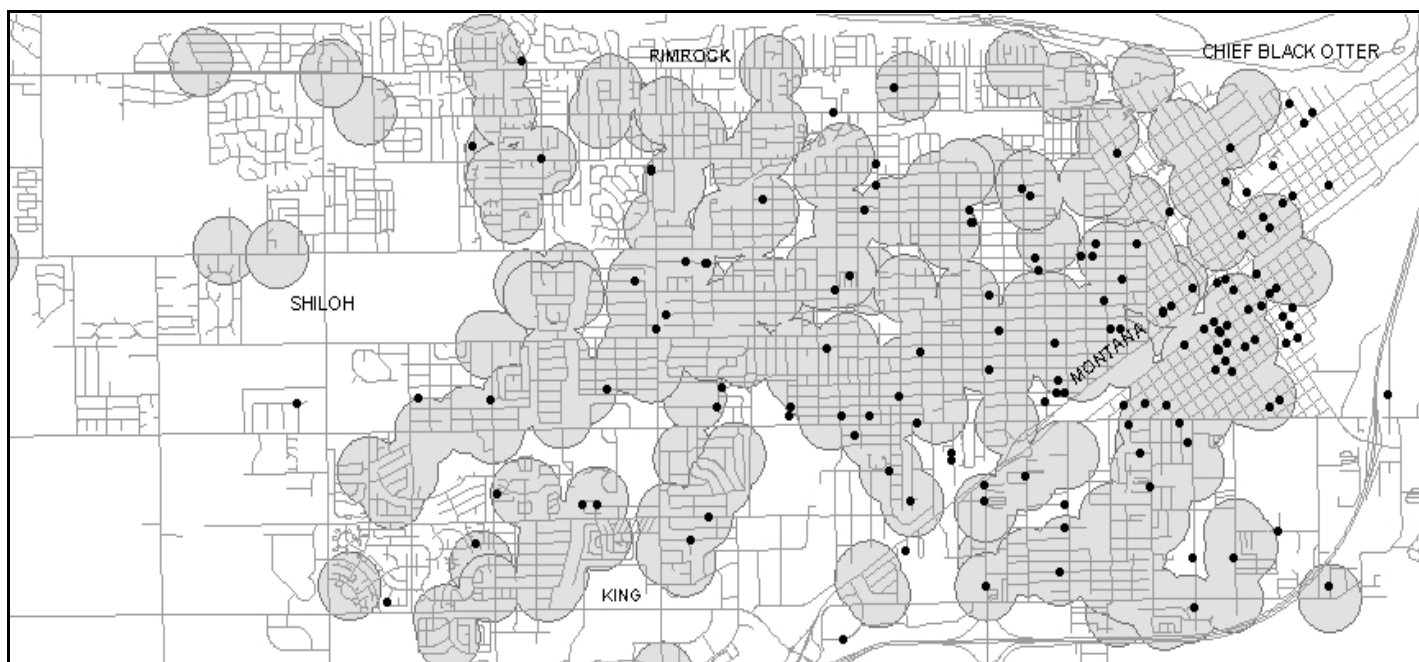
⁶⁷ Interview, 12/15/2005

⁶⁸ Recidivism of Sex Offenders Released from Prison in 1994. Bureau of Justice Statistics.

⁶⁹ Analysis of the Impact of Treatment Programs on Inmate Misconduct and Recidivism. Appendix.

⁷⁰ Interview, 11/13/2005





The dots on this map of Billings shows the residences of registered sex offenders. The shaded areas are 1,000-foot buffers around schools and daycares. Source: LSD analysis of data from DOJ, DPHHS, OPI.

Sex Offenders by County, 2005

County	Registered sex offenders	Number of residents per registered sex offender	County	Registered sex offenders	Number of residents per registered sex offender
Mineral	19	204	Treasure	1	745
Broadwater	15	302	Custer	14	818
Roosevelt	26	410	Toole	6	849
Missoula	226	438	Lewis and Clark	67	865
Rosebud	21	441	Pondera	7	878
Lincoln	41	466	Chouteau	6	929
Dawson	17	508	Jefferson	11	987
Yellowstone	262	514	Gallatin	73	1036
Flathead	151	538	Golden Valley	1	1117
Big Horn	24	542	Prairie	1	1147
Silver Bow	59	561	Madison	6	1180
Glacier	24	563	Sweet Grass	3	1233
Granite	5	571	Teton	5	1257
Sanders	19	576	Fergus	9	1282
Phillips	7	600	Powell	5	1375
Valley	12	606	Stillwater	6	1399
Blaine	11	606	McCone	1	1775
Richland	15	607	Sheridan	2	1810
Lake	45	620	Carbon	5	1951
Musselshell	7	645	Liberty	1	2020
Hill	25	655	Wheatland	1	2068
Meagher	3	659	Judith Basin	1	2191
Carter	2	662	Fallon	1	2774
Cascade	118	677	Daniels	0	NA
Park	23	687	Garfield	0	NA
Deer Lodge	13	699	Petroleum	0	NA
Ravalli	54	729	Powder River	0	NA
Beaverhead	12	737	Wibaux	0	NA
			MONTANA	1489	622

Sources: 2004 Census population estimates and Sex and Violent Offender Registry, fall 2005 download. Some offenders may be listed as residents of one county but register with an agency in another county. Broadwater County, for example, has offenders who register with police in Helena and Bozeman. For this analysis, the county of residence was used.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
February 2006						
			1	2	3	4
5	6 Long-Range Building Program funding subcom- mittee, Room 102, 1 p.m. (Legislative Finance Committee)	7	8	9	10 Economic Affairs Committee, Room 102, 8:30 a.m.	11
12	13	14	15	16 Revenue and Trans- portation Committee, Room 137	17 Revenue and Trans- portation Committee, Room 137	18
19	20	21	22	23 Postsecondary Edu- cation Policy and Budget subcom- mittee, Room 102, 9 a.m. Local Government subcommittee, Room 137	24 Education and Local Government Com- mittee, Room 137	25
26	27	28				

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
March 2006						
			1	2	3	4
5	6 Legislative Audit Committee, Room 172, 8 a.m. State Administration and Veterans' Affairs Committee, Room 102	7	8 Resource Indemnity Trust subcommittee, Room 102, 9 a.m. (Legislative Finance Committee)	9 Legislative Finance Committee, Room 102, 1 p.m.	10 Legislative Finance Committee, Room 102, 8 a.m.	11
12	13	14	15	16	17	18
19	20	21	22	23	24 Legislative Council, Room 137, 9 a.m.	25
26	27	28	29	30 Children, Families, Health, and Human Services Committee	31 Children, Families, Health, and Human Services Committee	

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